

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

FILED
TIME: 1:28 P
DEC 17 2009
JAMES BONINI, Clerk
COLUMBUS, OHIO

UNITED STATES OF AMERICA,

vs.

MICHAEL S. HIGHMAN,

DEFENDANT.

CASE No. 2:09-cr-293

JUDGE MARBLEY

PLEA AGREEMENT

Plaintiff United States of America and Defendant MICHAEL S. HIGHMAN,
hereby enter into the following plea agreement pursuant to Rule 11(c) of the Federal
Rules of Criminal Procedure:

1. Defendant MICHAEL S. HIGHMAN will enter a plea of guilty to Count One
of
the Information filed herein which charges him with knowingly distributing visual
depictions of child pornography in interstate commerce, in violation of 18 U.S.C. §
2252(a)(2).
2. Defendant understands that the maximum penalty that may be imposed
pursuant to his plea of guilty to Count One is a term of imprisonment of not less than 5
years and not more than 20 years, a fine of \$250,000.00 and supervised release for a
minimum of five years to a maximum term of life.
3. Prior to or at the time of sentencing, the Defendant will pay a special

assessment of \$100.00, as required in 18 U.S.C. §3013, to the United States District Court, at the Clerk's Office, 85 Marconi Boulevard, Columbus, Ohio 43215. Defendant will furnish to the government a receipt or other evidence of payment by the time of sentencing.

4. Defendant MICHAEL S. HIGHMAN acknowledges liability for the forfeiture alleged in Forfeiture A of the Information involving certain facilitating computer equipment and of child pornography, all of which were seized from Defendant at the time of the execution of the search warrant. Defendant MICHAEL S. HIGHMAN agrees to co-operate fully in the forfeiture of the computer equipment and accessories and the child pornography and also agrees not to contest that forfeiture in any way or to assist others in contesting that forfeiture. Defendant MICHAEL S. HIGHMAN further agrees to abandon any and all pornographic materials seized, whether depicting adults or minors or both, and agrees to abandon all photos which depict minors, other than clothed photographs of minor members of his own family.

5. The Defendant MICHAEL S. HIGHMAN is aware that the Court has jurisdiction and authority to impose any sentence up to the statutory maximum set forth for the offense to which the Defendant MICHAEL S. HIGHMAN pleads guilty. The Defendant is aware that the Court has not yet determined a sentence. The Defendant is also aware that the United States Sentencing Guidelines will still be considered by the court in sentencing, but that they are no longer mandatory. Defendant is further aware that any estimate of the probable sentencing range under the sentencing guidelines that the Defendant may have received from the Defendant's counsel, the United States, or the

probation office, is a prediction, not a promise, and is not binding on the United States, the probation office, nor the Court. The United States makes no promise or representation concerning what sentence the Defendant will receive, and the Defendant cannot withdraw his guilty plea based upon the actual sentence.

6. The parties enter into the following agreements and make the following recommendations regarding application of the United States Sentencing Guidelines to this Defendant:

- 6.1 U.S.S.G. § 2G2.2 (2008 Manual) is the guideline applicable to the offense resulting in a base offense level of 22;
- 6.2 Special Offense Characteristics under U.S.S.G. § 2G2.2(b) include:
 - a) an additional 2 levels under subsection (2) for material involving a prepubescent minor;
 - b) an additional 5 levels under subsection (3) for distribution for pecuniary gain;
 - c) an additional 4 levels under subsection (4) for material that portrays sadistic or masochistic conduct or other depictions of violence;
 - d) an additional 2 levels under subsection (6) for defendant's use of a computer in possessing the materials; and
 - e) an additional 5 levels under subsection (7) because the offense involved at 600 or more images.

Thus, the parties agree that MICHAEL S. HIGHMAN's offense level is 40.

- 6.3 Defendant MICHAEL S. HIGHMAN has "accepted responsibility" for the offense charged in the Information as that term is defined in U.S.S.G. § 3E1.1(a) and is deserving of at least a two point reduction in offense level. If the defendant continues to accept responsibility through the time of sentencing, the United States will notify the District Court, pursuant to § 3E1.1(b), that the defendant has timely notified authorities of his intention to plead guilty and that he is entitled to an overall three level reduction for acceptance of responsibility.

The government additionally agrees not to seek any upward departure from the determined sentencing guideline range. The parties agree and recommend that no other special offense characteristics or cross references under § 2G2.2 apply, but there are no further agreements on other provisions of the sentencing guidelines or their applicability. Defendant MICHAEL S. HIGHMAN and the United States understand that these recommendations are not binding on the Court and that the final determination of such matters for sentencing purposes rests entirely with the Court.

7. Defendant MICHAEL S. HIGHMAN, as a term of any sentence, or as a condition of probation or of supervised release, agrees:

(A) that during any term of probation or supervised release he will permit the installation of appropriate monitoring software, selected and/or approved by the United States Probation Office, upon any computer that he owns, uses, or has access to that is connected to the Internet and that he will permit the United States Probation Office full review of the monitoring software upon the supervising officer's request; and

(B) that he will register as required in 18 U.S.C. § 3583(d) and/or any State sex offender registration requirement and will be subject to the notification provisions of 18 U.S.C. § 4042(c) and/or any State sex offender notification provision.

8. If such plea of guilty is entered, and not withdrawn, and Defendant MICHAEL S. HIGHMAN acts in accordance with all other terms of this Plea Agreement, the United States Attorney for the Southern District of Ohio agrees not to file additional criminal charges against Defendant MICHAEL S. HIGHMAN based on his activities charged in the Information or counted as relevant conduct in the Southern District of Ohio and occurring prior to the date of the Information.

9. Defendant MICHAEL S. HIGHMAN understands that this agreement does not

protect him from prosecution for perjury, should he testify untruthfully, or for making false statements, nor does it protect him from prosecution for other crimes or offenses as to which he does not make admissions or give truthful information and which the United States discovers by independent investigation. Further, should the Defendant MICHAEL S. HIGHMAN fail to comply fully with the terms and conditions set forth herein, this agreement is voidable at the election of the government, in which case Defendant MICHAEL S. HIGHMAN shall be subject to prosecution as if the agreement had never been made.

10. The United States Attorney for the Southern District of Ohio agrees that if Defendant MICHAEL S. HIGHMAN provides substantial assistance in the investigation or prosecution of others who have committed criminal offenses, the United States Attorney may move the court pursuant to § 5K1.1 of the Federal Sentencing Guidelines and/or Federal Rules of Criminal Procedure, Rule 35(b) for an appropriate departure from the otherwise applicable guideline range for Defendant's sentence and will in connection therewith make known to the Court the nature and extent of Defendant's assistance. Defendant understands that such motion may not be filed until the United States Attorney is satisfied that the Defendant has substantially cooperated. Defendant understands that whether such motion should be made lies within the discretion of the United States Attorney and that whether and to what extent such motion should be granted are solely matters for determination by the Court.

11. By virtue of the Defendant MICHAEL S. HIGHMAN pleading guilty to the

Information in exchange for the plea agreement, the Defendant understands that he is not a prevailing party as defined by 18 U.S.C. §3006A (statutory note captioned "Attorney Fees and Litigation Expenses to Defense") and hereby expressly waives his right to sue the United States thereunder.

12. It is agreed that if the Court refuses to accept any provision of this Plea Agreement, except those in paragraph 6, neither party is bound by any of its provisions; thereafter, Defendant MICHAEL S. HIGHMAN may withdraw his guilty plea, and the United States Attorney for the Southern District of Ohio may seek leave to dismiss the Information without prejudice and may seek identical and/or additional charges. Defendant MICHAEL S. HIGHMAN will not object to such dismissal or filing of further charges.

13. No additional promises, agreements, or conditions have been made relative to this matter other than those expressly set forth herein, or unless in writing and signed by all parties.

12/14/09
Dated

Michael S. Highman
MICHAEL S. HIGHMAN
Defendant

12/14/09
Dated

[Signature]
MARK C. COLLINS (0061207)
Attorney for Defendant

CARTER M. STEWART,
United States Attorney

12/15/09

Dated



MICHAEL J. HUNTER (0076815)
Assistant United States Attorney